



CONSERVATION COMMISSION MEETING MINUTES – May 2, 2016

Present: Scott McIsaac- Chair, Eldon Abbott- Vice Chair, Bob Mosher, Laurie Freeman, John Morrissey, Frank Gaul, Loni Fournier- Conservation Officer

Absent: Michael Ide

Meeting was called to order at 7:02 PM.

Approval of Minutes

Motion: Commissioner Morrissey motioned to approve the minutes from the April 11, 2016 Commission meeting.

Second: Commissioner Mosher

In Favor: All

Opposed: None

Requests for Determination of Applicability

171 Otis Street

Applicant: Gary and Christine Jacobson

Representative: Roger Hoit

Proposed: Repairing a retaining wall and removing a tree

Roger Hoit presented the project plans to the Commission and introduced the homeowners, Gary and Christine Jacobson.

The applicant is proposing to remove an existing tree, including its stump and roots, located near an existing seawall, and to repair the seawall. The portion of the seawall that is closest to the tree will be completely rebuilt. The remaining portion of the seawall will be repaired.

Staff visited the site on 4/20/16. The property slopes from the street down to the seawall. A portion of the seawall is collapsing and is in need of repair. The grass and soil above this portion of the seawall have become unstable and is eroding. The tree that is proposed to be removed is near the edge of seawall. Aside from listing slightly, the tree appears to be in good health.

The Conservation Officer stated that the existing tree stabilizes the slope, but it is also causing the wall to break apart. She further stated that the main concern after removing the tree would be slope stabilization to prevent materials and debris from washing down onto the beach.

Commissioner McIsaac asked about the age of the wall. Mr. Jacobson replied that the house was built in 1930 and he estimated that the wall was built around that time as well.

Commissioner Abbott asked Mr. Hoit if he planned to rebuild the wall using the same stone and if the new wall will be mortared with weep holes, to provide drainage. Mr. Hoit stated that as much existing stone will be used as possible and the wall will be mortared with weep holes.

Commissioner Freeman stated that her initial reaction was to keep the tree, which provided stability, erosion control, and wildlife habitat. She further stated that she understood why the tree needed to be removed, but doing so raised other concerns related to sea level rise and climate change, and whether constructed walls or natural barriers were the

best solution. Mr. Hoit stated that if the tree remained in place, the roots would have to be cut back too far in order to rebuild the wall, which would damage the tree. He also stated that the floodplain is near the height of the wall, and repairing the wall provides the best protection for the slope and house.

Motion: Commissioner Gaul motioned to issue a Negative Determination of Applicability for the work proposed at 171 Otis Street, as shown on the submitted plans, and adopt the findings of fact a and b, and conditions 1-4 of the staff report.

Findings:

- a. This project meets the requirements of Part 1, Section 7.1 of the Town of Hingham Wetland Regulations governing procedures for a Request for Determination of Applicability.
- b. The work described is within an area subject to protection under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations, and will not alter or adversely affect the area subject to protection under the Act or the Regulations.

Conditions:

1. Prior to the start of construction, erosion controls shall be installed and inspected by the Conservation Department; straw wattles and/or hay bales will not be used as a form of erosion control.
2. Erosion controls shall remain in place until construction is complete and the disturbed areas are loamed and seeded, and stabilized with jute netting.
3. Any debris that falls into the resource area during construction shall be removed immediately by hand.
4. The Conservation Department shall be notified to any changes in plans prior to proceeding with said changed plans.

Second: Commissioner Mosher

In Favor: All

Opposed: None

Commissioner McIsaac read the Public Hearing Notice of Intent.

Notices of Intent

27 & 29 Bel Air Road – DEP 034-1257

Applicant: Belinda and Donald Maggioli

Proposed: Removing and replacing existing pilings

Belinda and Donald Maggioli presented the project plans to the Commission.

The applicant at 27 Bel Air Road is proposing, with their neighbor's permission, to replace two of their existing, damaged pilings with two unused pilings from 29 Bel Air Road. Two additional unused pilings, for a total of four pilings, will be removed at 29 Bel Air Road. No other alterations will be made to the dock/pier structures at 27 or 29 Bel Air Road.

Staff visited the site on 4/27/16. Staff does not believe the proposed project will negatively impact the resource areas.

The Conservation Officer stated that she was in contact with the DEP for their assistance on this project and to make sure that it was just the one filing for the house where the pilings are being replaced.

Commissioner McIsaac asked how they would remove the pilings. Ms. Maggioli stated that she submitted a narrative from Smith Marine, who would be performing the work, to the Conservation Officer. Commissioner Abbott stated that the pilings are vibrated as they are pulled out of the water, and that it was fairly common practice.

Commissioner McIsaac opened the hearing to public comment. Hearing none, Commissioner McIsaac closed the hearing to public comment.

Motion: Commissioner Abbott motioned to issue an Order of Conditions for the proposed work at 27 & 29 Bel Air Road, as shown on the submitted plans, and adopt the findings of fact a and b, and condition 1 of the staff report.

Findings:

- a. The project meets the requirements for issuance of an Order of Conditions under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations.
- b. The work described is within an area subject to protection under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations, and will not alter or adversely affect the area subject to protection under the Act or the Regulations.

Conditions:

1. Any comments received from the Massachusetts Division of Marine Fisheries shall be added as special conditions to the Order of Conditions.

Second: Commissioner Freeman

In Favor: All

Opposed: None

191 Downer Avenue – DEP 034-xxxx

Applicant: Michael Connolly

Proposed: Permitting an existing dock and seasonal floats

Commissioner Gaul recused himself from the hearing. Michael Connolly presented his plans to the Commission.

The applicant is pursuing the necessary state and local permits for the existing fixed dock and four seasonal floats on the property. The state and local permitting processes, combined with the recent repairs that were made to the structures, triggered this NOI application.

Last year, the applicant made repairs to the fixed dock, but did not change the footprint of the structure (10' x 30'). The fixed dock does not meet all of the performance standards outlined in Section 23.4 of the regulations, more specifically it is greater than 4' wide (c1) and it is not aligned with the center line of the lot (c11), however it does not appear as though the footprint of the structure has changed in over 10 years. The new planks on the deck of the structure are spaced 1" apart.

Last year, the applicant also rebuilt the floats, changing the dimensions of the floats and adding two floats for a total of four. In the previous configuration, there were two floats (1 @ 24' x 6' and 1 @ 30' x 7') connected by two 16' long ramps, for a total length of 86' or 116', including the fixed dock.

The current configuration includes four floats (1 @ 20' x 4' and 3 @ 20' x 8') connected to the fixed dock by an 18' long ramp, for a total length of 98' or 128', including the fixed dock. Last year, the floats bottomed out at low tide. This year, the applicant is adding skids to the bottom of the floats that will keep them at least 18" above the resource areas at low tide; the skid material has yet to be determined. Even with this modification, the floats do not meet all of the performance standards outlined in Section 23.4 of the regulations, more specifically, there is more than one float (c1) and the impact is greater than 10' x 20' (c9). The floats are currently in storage, so staff was unable to verify their composition.

Staff visited the site on 4/27/16. Staff observed a break in the vegetation on the coastal beach, on the seaward side of the fixed dock, presumably caused by the floats bottoming out at low tide last season.

The Conservation Officer recommended to the Commission that the discussion be broken up into two separate pieces: the fixed dock and the seasonal floats. Commissioner McIsaac supported that recommendation.

Commissioner McIsaac and Mr. Connolly discussed the repairs that were made to the fixed dock. Commissioner McIsaac asked Mr. Connolly to confirm that no changes were made to the footprint of the fixed dock. Mr. Connolly confirmed.

Mr. Connolly admitted that he was unaware of the fact that the Chapter 91 license for the fixed dock had expired. He stated that he worked with the DEP and the Harbormaster to understand how to bring the fixed dock into compliance, and recently submitted a Chapter 91 license application to the DEP.

Commissioner Morrissey asked about the issues that were raised last summer while the fixed dock was being repaired. The Conservation Officer stated that in her review of the file, she found that there was an issue with the plank spacing on the deck, which had been fixed. Commissioner Morrissey recalled an issue with the fixed dock being enlarged. Mr. Connolly stated that the fixed dock was enlarged by one foot, but was cut back. Commissioner Morrissey asked if file reflected this information. The Conservation Officer stated that she was not sure.

Commissioner Mclsaac invited Susan Murphy, Town Counsel, to the table to discuss her findings related to the modifications that were made to the fixed dock. Ms. Murphy stated that the Building Department had a permit on file that had been signed by staff indicating that the repairs were made according to plan.

Commissioner Morrissey asked if any other work had been completed on the fixed dock since it was repaired. Mr. Connolly said no other work had been completed.

Commissioner Mclsaac asked about the timeframe for a Chapter 91 license. Mr. Connolly stated that he was told it could take a year and a half.

Commissioner Mosher asked if the Chapter 91 licensing process was usually “automatic.” Ms. Murphy stated that it was not necessarily automatic and that this situation was different because the original license was issued in 1955 and sometime between 1995 and 2001, based on aerial images, the fixed dock was changed, which meant the current configuration had been in existence for 15-20 years. She further stated that it was her understanding the DEP would review the current fixed dock “as is,” and approve or deny the current configuration.

Ms. Murphy also raised the point that the Town’s current dock regulations were likely not in place between 1995 and 2001, when the fixed dock was changed.

Commissioner Mclsaac opened the hearing to public comment.

John Shea, who represented the abutters Dan and Mary Omstead, summarized the materials that were submitted to the Commission over the last ten months. Mr. Shea also introduced Rod Gaskell and Jeff Couture, from SITEC Environmental.

Mr. Shea noted that, in addition to the Enforcement Order that was issued for the fixed dock repairs, the Commission requested additional information from Mr. Connolly, which was never provided. He further stated that the Order of Conditions pertained to the construction of the house, not the repair of the fixed dock.

Mr. Shea also noted that the Omsteads requested an over-the-water, patio-style structure in 2006, which was denied by the Commission at that time.

Mr. Omstead stated that two items were required at the time the fixed dock was being repaired: to meet the current standards and to prove that the fixed dock was legal, both of which have not been met. Commissioner Mclsaac stated that the reason the fixed dock was before the Commission was to make it legal through the state’s Chapter 91 licensing process.

Mr. Connolly stated that he was asked to reduce the footprint of the deck and increase the spacing between the planks on the deck in order to receive a Certificate of Occupancy for his house. He further stated that that it was after the Certificate of Occupancy that he was made aware of the fact that the fixed dock did not have a valid Chapter 91 license.

Mr. Gaskell summarized the permits, six total, that are required for a legal fixed dock. He stated that he was unable to find one permit for Mr. Connolly’s fixed dock and given that fact, he felt it should meet the current regulations. He further stated that he felt it would be more damaging to leave the fixed dock in its place than to reconstruct it to meet current regulations.

Commissioner Morrissey asked Mr. Gaskell if there was a way to bring the fixed dock into compliance with the current regulations. Mr. Gaskell replied that the fixed dock must be removed in order to repair the environment.

Commissioner Mosher asked if the salt marsh could be restored without removing the fixed dock. Mr. Gaskell replied that the deck would have to be removed, to allow 100% sunlight, for three to five seasons for the salt marsh to be restored under the fixed dock. He further stated that light penetrating Gator decking could replace the original decking, after three to five seasons, and support the restored salt marsh.

Commissioner Abbott and Mr. Gaskell discussed the state regulations that pertain to the height of the fixed dock. Mr. Gaskell indicated that the height is determined by the width, for example if a fixed dock is four feet wide, it must be four feet above the grade below the fixed dock.

Commissioner Freeman asked for clarification on the actions that were required of Mr. Connolly at the time the fixed dock was being repaired and stated that it was her understanding those actions were met. She further stated that this is the first time the fixed dock is before the Commission in order to evaluate whether it meets all of the current regulations.

Mr. Shea read from a letter that was sent by the previous Conservation Officer at the time of the fixed dock repairs, "work shall otherwise comply with Section 23.4 of the Hingham Regulations governing standards for docks and piers." Commissioner Morrissey stated that Mr. Connolly came before the Commission last summer and it was reported that the repair work was compliant, and if that was reported in error, the Commission was prepared to address the problems that were created last summer.

Mr. Gaskell restated that he felt the best solution was to reconstruct the fixed dock to meet the current regulations, however he also suggested to the Commission, if they decided to leave the fixed dock in place, to require the fixed dock to be elevated, leave it at the same width, replace the deck with Gator decking, and hire a wetlands expert to restore the salt marsh. He further stated that these actions would take away 90% of the environmental damage associated with the fixed dock.

Commissioner Abbott asked Mr. Gaskell how much higher the fixed dock needed to be raised. Mr. Gaskell said that he could not tell because the filing lacked engineered plans.

Mr. Connolly, Commissioners Abbott and McIsaac, and Ms. Murphy discussed the status of the Chapter 91 license at the time of the fixed dock repairs.

Ms. Murphy stated that the Building Commissioner would not act on a structure that was built, without a permit, more than 10 years ago.

Commissioner Abbott asked Mr. Gaskell if the deck was replaced with Gator decking and the salt marsh replanted under the fixed dock, would it receive a Chapter 91 license. Mr. Gaskell replied that Chapter 91 focuses on obstructions to navigation and the physical structure, and that it was up to the Commission to review the environmental aspects of the application.

Commissioner McIsaac and Mr. Shea discussed whether or not Mr. Connolly was responsible for restoring the salt marsh, which had been destroyed 15-20 years prior. Mr. Shea stated that the Wetlands Protection Act requires new property owners to restore violations under the Act, whether or not they were responsible for those violations.

Commissioners Freeman and McIsaac discussed the specificity of the Town's current dock regulations and the amount of discretion the Commission had in applying those regulations.

Commissioner Morrissey asked Mr. Connolly if he had a proposal that would help the Commission accomplish its goals related to protecting the salt marsh. Mr. Connolly stated that he would be willing to replace the deck with Gator decking and replant the salt marsh under the fixed dock.

Ms. Murphy suggested that the hearing be continued to allow Mr. Connolly to seek legal and engineering advice. Mr. Connolly stated that his preference was to try and reach a decision tonight.

Mr. Shea stated that it would be helpful to have engineered plans to review. Commissioner McIsaac and the Conservation Officer stated that there was a precedent for hand-drawn plans accompanying NOI applications. Mr. Shea stated that Mr. Connolly will need an engineered plan for the Chapter 91 license. The Conservation Officer stated that the Chapter 91 simplified license application, which Mr. Connolly completed, accepts hand-drawn plans.

The discussion transitioned to the seasonal floats. Mr. Connolly described the work that he completed on the floats last summer. The Conservation Officer added that last year, the floats bottomed out on the mud flats and this year Mr. Connolly has indicated that he will be installing skids on the floats to keep them at least 18" above the mud flats. Mr. Connolly confirmed that he is working with his builder to install skids on the floats.

The Conservation Officer explained that because the floats were changed from the original configuration, the Harbormaster requires review of the floats by the Commission before he will issue a 10A permit. Mr. Connolly clarified the original configuration did not have skids.

Mr. Omstead stated that the Town's regulations only permit one float up to 10 feet by 20 feet in size.

Mr. Gaskell stated that the Harbormaster's review of the floats is limited to safety and navigability, not the environment. He further stated that the Town's regulations are meant to limit the impacts on the intertidal zone.

Commissioner Morrissey asked Mr. Gaskell if the skids limit the amount of damage to the intertidal zone. Mr. Gaskell described the damage that the chains connecting and securing the floats cause to the intertidal zone. He further stated that skids also cause damage, while pilings with float stops limit the damage. Commissioner Freeman clarified that the Town's regulations allow for skids or pilings with float stops.

Mr. Connolly clarified that the floats were less than 150 feet long, which the Town's regulations specify cannot be exceeded when measuring from the landward side of the dock to the seaward end of the float. Mr. Connolly further clarified that the floats were bolted together.

Commissioner Freeman suggested that the Commission restrict the size of the floats to what was last permitted by the Harbormaster. Mr. Omstead stated that more than just the sketch of the previous configuration should be used to verify the number and size of the last permitted floats. Ms. Murphy stated that the Harbormaster would have the previous float permit on file.

Commissioners McIsaac and Morrissey discussed the intent of the 150 foot limit on docks and floats.

Mr. Gaskell stated that he felt the Commission was giving too much consideration to the previous float permit, which was issued sporadically over the last few years, based on his review of the Harbormaster's files.

Commissioner McIsaac and Mr. Connolly discussed the changes that Mr. Connolly was willing to make to the current float configuration. Mr. Connolly agreed to reduce the number of floats, thus reducing the overall length and coming close to the length that was previously permitted by the Harbormaster. Mr. Connolly further stated that he would prefer not to have to cut any of the floats in half in order to match the previous length.

Ms. Murphy recommended that the Commission reflect on previous applications, and apply and interpret the regulations on a consistent basis.

Mr. Shea suggested that the Commission close the hearing and deliberate on the final conditions to ensure their accuracy and completeness. Mr. Connolly stated that his preference was to come to a decision tonight. Ms. Murphy asked the Commission to consider whether they needed any additional information in order to make a decision and

finalize the conditions. Commissioner Morrissey stated that he would like the previous permitted float configuration to be verified by the Harbormaster.

Commissioner Morrissey asked Mr. Connolly if he would be willing to reduce the area of the current configuration of floats to match the area of the previously permitted configuration. Mr. Connolly said that he would be willing to reduce the square footage of the current floats if it was the only open issue and a decision could be reached tonight.

Mr. Shea asked whether the plastic float was before the Commission. Commissioner Morrissey stated that it was not.

Commissioners Morrissey and Abbott suggested that the hearing be continued. Commissioner McIsaac asked Mr. Connolly if he would be willing to continue the hearing. Mr. Connolly asked for clarification on the outstanding issues. Commissioner Morrissey stated that there were four items: the Gator decking on the fixed dock; reestablishing the salt marsh; the square footage of the previously permitted float configuration; and a new sketch that depicts a proposed configuration that is comparable to the previously permitted float configuration.

Commissioner McIsaac closed the hearing to public comment.

Motion: Commissioner Morrissey motioned to continue the Notice of Intent hearing for 191 Downer Avenue to May 23, 2016.

Second: Commissioner Mosher **In Favor:** All **Opposed:** None **Recused:** Commissioner Gaul

Commissioner Gaul returned to the meeting, but immediately excused himself for the evening. [Quorum was maintained.]

895 & 901 Main Street – DEP 034-xxxx

Applicant: Gerry Rankin Representative: Gary James

Proposed: Proposed subdivision

Commissioner Morrissey recused himself from the hearing. Gary James, representative for Gerry Rankin, presented the plans to the Commission.

The applicant is proposing to subdivide the existing parcel at 901 Main Street and construct a roadway that will provide access to four single family homes on the property. The four house lots will be concentrated on the eastern side of the parcel, closer to Main Street. The wetlands on the western side of both parcels, covering approximately 7.5 acres, will not be disturbed.

This NOI application is for the construction of the roadway and associated infrastructure, not the houses. Only Lot 4, closest to the wetlands, will require a separate NOI application.

The Conservation Department asked John Chessia to peer review the plans. Mr. Chessia is also peer reviewing the plans for the Planning Board.

Commissioner Abbott noted that the plans show the roadway running over the infiltration system. Mr. James stated that he would modify the plans and make sure the roadway did not interfere with the system.

Commissioner Abbott questioned the use of hay bales on the site. Mr. James stated that he would not use hay bales and he would change the plans to use mulch logs.

Commissioner Abbott asked if the tracking pad would keep dirt and mud from reaching the street. Mr. James said yes. Commissioner Abbott asked if the trucks would be washed before moving over the pad. Mr. James said no, but there was going to be a street sweeper available to help keep the mud off of the street during construction, if it became a problem.

Commissioner McIsaac opened the hearing to public comment. Hearing none, Commissioner McIsaac closed the hearing to public comment.

Motion: Commissioner Abbott motioned to continue the Notice of Intent hearing for 895 & 901 Main Street to May 23, 2016.

Second: Commissioner Mosher **In Favor:** All **Opposed:** None **Recused:** Commissioner Morrissey

Commissioner Morrissey returned to the meeting.

Certificates of Compliance

54 Whiting Street – DEP 034-1000

An Order of Conditions was issued in May 2009 for landscape improvements and restoration work to mitigate vegetation removal near a buffer zone. Staff visited site on 4/11/16. The plantings adhere to the proposed plan and are in good condition.

Motion: Commissioner Abbott motioned to issue of Certificate of Compliance for 54 Whiting Street, DEP 034-1000.

Second: Commissioner Mosher **In Favor:** All **Opposed:** None

1100/1112 Main Street – DEP 034-1001

An Order of Conditions was issued in April 2009 for the construction of a playground area in the back of the building. Staff visited the site on 4/20/16. The playground adheres the proposed and as built plans.

Motion: Commissioner Abbott motioned to issue of Certificate of Compliance for 1100/1112 Main Street, DEP 034-1001.

Second: Commissioner Morrissey **In Favor:** All **Opposed:** None

11 Conditto Road – DEP 034-0352

An Order of Conditions was issued in September 1991 for the construction of a 25 foot wide roadway about 90 feet in length with grading, drainage, and paving. Staff visited the site on 4/20/16. The roadway adheres to the proposed plans.

Motion: Commissioner Abbott motioned to issue of Certificate of Compliance for 11 Conditto Road, DEP 034-0352.

Second: Commissioner Freeman **In Favor:** All **Opposed:** None

11 Conditto Road – DEP 034-0415

An Order of Conditions was issued in July 1994 for the construction of a sewer line, connecting the Town's sewer system. Staff visited the site on 4/20/16. The connection is underground and covered by pavement.

Motion: Commissioner Abbott motioned to issue of Certificate of Compliance for 11 Conditto Road, DEP 034-0415.

Second: Commissioner Morrissey **In Favor:** All **Opposed:** None

7 Daley Road – DEP 034-1203

An Order of Conditions was issued in September 2014 for the construction of a single family home. Staff visited the site on 4/20/16. The as-built plan adheres to the existing structure; however, slight modifications were made to the final approved plans. Those discrepancies include the addition of an open deck and the outline of the eastern side of the house. It is important to note that at the time of the filing, this property was located in the flood zone and was required to file with Conservation. With the new FEMA flood maps that were released in August 2015, this property is no longer in the flood zone and there are no other resource areas near the property.

Motion: Commissioner Abbott motioned to issue of Certificate of Compliance for 7 Daley Road, DEP 034-1203.

Second: Commissioner Freeman **In Favor:** All **Opposed:** None

Cushing Pond – DEP 034-0845

An Order of Conditions was issued in April 2006 for the treatment of Cushing Pond to control nuisance and non-native aquatic plant species. The applicants were approved to continue their management plan at the last Commission meeting (4/11/16). This is their original filing, which they wish to close out.

Motion: Commissioner Abbott motioned to issue of Certificate of Compliance for Cushing Pond, DEP 034-0845.

Second: Commissioner Morrissey

In Favor: All

Opposed: None

Other Business

The Conservation Officer discussed 15 Fort Hill Street, which was issued an Order of Conditions that expired in September 2015. The applicant paid a significant amount of filing fees, however they lost track of time and did not complete the items required in the Order of Conditions. The Conservation Officer stated that she contacted the DEP for guidance in order to give the applicants a few more months to complete the wetlands restoration work. The DEP suggested a “friendly” Enforcement Order, which will give the applicant one year to complete the work.

The Conservation Officer also discussed 54 Wompatuck Road, which was recently issued an Amended Order of Conditions for an addition to a single family home. She indicated that the applicants have changed their plans many times, prompting the Commission to require a new filing for any other changes. The applicant has come forward with a request to expand their approved addition. The Conservation Officer asked the Commission if they would be willing to hear the request as an Amended Order of Conditions, since the changes are related to the approved addition, and from an administrative perspective, it would keep the filing together under one DEP number. The Commission agreed to hearing the request as an Amended Order of Conditions.

The Conservation Officer stated that she received notice from the DEP that the abutters of 0 and 91 Lazell Street have officially appealed the Commission’s decision.

The meeting adjourned at 11:20 PM.

Submitted,

Elizabeth Berry, Administrative Assistant

Approved on May 23, 2016